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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 ROBERT W. ELLIOTT,

9 *Petitioner,*

10 vs.

11 E. K. McDANIEL, *et al.*,

12 *Respondents.*

3:11-cv-00041-LRH-VPC

13 ORDER

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15 This habeas matter under 28 U.S.C. § 2254 comes before the Court on petitioner's motion (#9) for appointment of counsel, motion (#10) for extension of time, and motion (#11) to expedite ruling.

16 On the motion for counsel, the Sixth Amendment right to counsel does not apply in habeas  
17 corpus actions. *See Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). However, 18 U.S.C. §  
18 3006A(a)(2)(B) authorizes a district court to appoint counsel to represent a financially eligible habeas  
19 petitioner whenever "the court determines that the interests of justice so require." The decision to  
20 appoint counsel lies within the discretion of the court; and, absent an order for an evidentiary hearing,  
21 appointment is mandatory only when the circumstances of a particular case indicate that appointed  
22 counsel is necessary to prevent a due process violation. *See, e.g., Chaney v. Lewis*, 801 F.2d 1191, 1196  
23 (9th Cir.1986); *Eskridge v. Rhay*, 345 F.2d 778, 782 (9th Cir.1965).

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25 Having reviewed the petition, the request for counsel, and petitioner's *pro se* filings in this and  
26 his prior federal habeas action, the Court does not find that the interests of justice require that counsel  
27 be appointed. Petitioner has demonstrated an adequate ability to articulate his position. Indeed, many  
28 of petitioner's claims in this action and his prior federal action are based upon an alleged "irreconcilable

1 conflict" with his counsel because counsel would not pursue issues and claims at trial and on appeal that  
 2 petitioner wanted him to pursue. Petitioner further has urged previously on federal habeas review that  
 3 the state supreme court should have allowed him to present *pro se* filings on direct appeal despite then  
 4 being represented by counsel. Nothing in the record before the Court reflects that petitioner does not  
 5 have the capacity to respond to the pending show cause inquiry regarding lack of exhaustion without  
 6 assistance of counsel. Petitioner previously responded to a motion to dismiss based upon, *inter alia*,  
 7 lack of exhaustion in his prior federal habeas action.

8 IT THEREFORE IS ORDERED that petitioner's motion (#9) for appointment of counsel is  
 9 DENIED.<sup>1</sup>

10 IT FURTHER IS ORDERED that the motion (#10) for extension of time is GRANTED IN  
 11 PART, such that the time for petitioner to mail a response to the prior show cause order (#7) for filing  
 12 is extended up to and including **forty-five (45) days** after entry of this order. With the extension  
 13 granted by this order, petitioner will have had ample time to respond to the February 21, 2012, show  
 14 cause order.

15 IT FURTHER IS ORDERED that the motion (#11) for expedited ruling is GRANTED per this  
 16 order denying the motion for appointment of counsel.

17 If petitioner does not timely respond to the show cause order, the petition will be dismissed  
 18 without further advance notice. If petitioner responds but fails to demonstrate, with specific reference  
 19 to supporting state court filings in the manner specified in the show cause order, that the exhaustion  
 20 requirement has been satisfied, the petition will be dismissed without prejudice for lack of exhaustion.

21 DATED this 13th day of March, 2012.



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 23  
 24 LARRY R. HICKS  
 25 UNITED STATES DISTRICT JUDGE  
 26  
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28 <sup>1</sup>Petitioner is not proceeding *in forma pauperis* in this action, and the Court expresses no opinion as to whether  
 petitioner currently satisfies the financial eligibility requirement for appointment of counsel.